1951

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File No. O Payment of Taxes [T.P.]/51

Legal Department

H BRANCH

Subject:—

Opinions under the Bor Payment of Taxes {Transfer of property} Act, 1949

File No. O Payment of Taxes (T.P.)/51

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C O N T E N T S.

Legal Department File No. 0. Payment of Taxes (T. P.) 1951.

Sr. No.	R.I./O.No.	Subject	Pages.
		Opinions under the Payment of Taxes (Transfer of Property) Act, 1949.	
1.	6875 30/4/51.	Question whether the Sub-Registrar would not be justified in withholding or refusing registration of the documents of such persons in respect of whom a declaration has not been received unier Sec. 2 (ii).	1-4.
2.	11073 15-7-51.	Question whether where a declaration has been made by him under Sec. 20 of the Administration of Evacuee Property Act, 1950, no further declaration would be necessary under Sec. 12(ii) of the Payment of Taxes (T. of P.) Act, 1949.	

Rele.M.S.

Legal Department.

The Revenue Department in its office note at page 23 states: "In view of the recent judgment of Shri Justice Bhagwati, it will not be proper on the part of the Sub-Registrar or any other registering officer to refuse or withhold registration of the documents in the absence of any such specific declaration from the competent authorities under section 2(ii) of the Payment of Taxes (Transfer of Property) Act, 1939. The declaration in respect of these cases are not likely to be issued by either the Income Tax Officer or Custodian or Collector early. It is therefore suggested that the Inspector General of Registration may be asked to instruct the sub-Regsitrar, Bombay, to register the documents of such persons without delay". The question raised for the R.L.A.'s consideration is whether the proposed orders would be in order.

Under section 2 of the Payment of Taxes (Transfer of Property) Act, 1949, the Act shall apply to (i) an evacuee and (ii) "any person who, in the opinion of the Income Tax Authorities specified in sub-section (1) of section 5 of the Indian Income Tax Act, 1922, or a Custodian of Evacuee Property or a Collector is likely to leave the Provinces of India with the

intention of settling in any place outside the Provinces of India and in resepct of wh whom a declaration that he is a person to whom this Act applies has been received fro any such Income Tax Authority, Custodian of Evacuee Property or Collector by the registering officer of the area in which any property belonging to such person is situate". It is therefore clear from this provision that unless a declaration has been received in respect of any such person from any of the authorities specified in section 2(ii), the Act would not be applicable. If so, section 3 of the Act would not be attracted and Sub-Registrar would not be justified in withholding or refusing registration of the documents of such person in respect of whom a declaration has not been received under section 2(ii). The view taken by Shri Justice Bhagwati is correct and the proposed orders would not be free from any legal objection.

Id/-

Additional Secretary to Government.

U.R. to R.D. No. 6875, dated the

30th April 1951.

MSR.

Legal Department.

The Joint Secretary, Rehabilitation Department, appears to be of the opinion that where a declaration has been made by him under section 20 of the Administration of Evacuee Property Act, 1950, no further declaration would be necessary under section 2(ii) of the Payment of Taxes (Transfer of Property) Act, 1949. R.L.A. is requested to advise.

2. The object of the Administration of Evacuee Property Act, 1950, is different from the object of the Payment of Taxes (Transfer of Property) Act, 1949, whereunder the registration of documents is prohibited for the purpose of enforcing payment of taxes. It is true that on a declaration being made under section 19 of the Administration of of Evacuee Property Act, registration of documents in respect of property of such evacuee is prohibited under section 41(1), but sub-section (2) clearly provides: "save as otherwise expressly provided herein, nothing contained in sub-section (1) shall be deemed to affect the provisions contained in the Payment of Taxes (Transfer of Property) Act, 1949, or any other law for the time being in force relating to the registration of documents". Further section 2(ii) of the Payment of Taxes (Transfer of Property) Act, 1949, clearly provides for a declaration by

a Custodian of Evacuee Property etc., that he is the person to whom this Act applies. Consequently, a declaration made under section 20 of the Administration of Evacuee Property Act, 1950, would not be a declaration made in respect of a person to whom the Payment of Taxes (Transfer of Property) Act, 1949, applies. It would, therefore, follow that a separate declaration that the evacuee is a person to whom the Payment of Taxes (Transfer of Property) Act, 1949, applies is essential and the Custodian of Evacuee Property will have to make a declaration to that effect under section 20 of the Administration of Evacuee Property Act, 1950.

Id/-

Additional Secretary to Government.

U.R. to R.H.D. No. 11073, dated the

13th July 1951.

MSR.